

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 961 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMSINGH KISHORSINGH PADHIAR

Versus

DALICHAND BAVERLAL JAIN

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Appearance:

MR MH RATHOD for Petitioners

MR VIPUL S MODI for Respondent No. 1, 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/01/99

ORAL JUDGEMENT

This Revision is directed against the order dated 8.11.1993 passed below Exh.1 in Civil Misc.Application No.27/92 by the Jt.Civil Judge (JD), Palanpur, Danta, whereby the learned Judge has rejected the petitioner's application for condonation of delay in filing the Civil Misc.Application under Order 9 Rule 13 of C.P.C. for setting aside the ex-parte decree.

2. The necessary facts are that the respondent-plaintiff filed suit for possession in the year 1990. The suit was decreed ex-parte, by judgment dated 31.1.1991. The defendant petitioner filed application under Order 9 Rule 13 of C.P.C. along with application under Section 5 of the Limitation Act on 1.9.1992. In Application filed under section 5 of the Limitation Act, the petitioner stated that he came to know of the decree on 31.7.1992. Thereafter he obtained a certified copy of the order from the Palanpur Court and filed application under Order 9 Rule 13 of the C.P.C. for setting aside the ex-parte decree on 31.7.1992. The learned Judge found that the defendant has failed to show that there was sufficient reason for his non-appearance during the suit proceedings. He also found that the petitioner, in fact, came to know about the ex-parte decree prior to 31.7.1992. The learned Judge accordingly rejected the application for condonation of delay.

3. It is contended by Mr Rathod, learned Advocate appearing for the petitioner that the learned Judge has committed illegality in exercising jurisdiction in refusing to condone the delay in considering the merit of the application under Order 9 Rule 13 of the C.P.C. It is also submitted that the defendant petitioner came to know about the decree on 31.7.1992. Thus, there was sufficient reason for condonation of delay. He relied upon a decision in the case of Panna Lal v. Murari Lal, reported in AIR 1967 SC 1384. On the other hand, Mr Modi, learned Advocate strenuously argued that the defendant has abused process of the Court. He further submitted that the learned Judge, by cogent reason, rejected the application for condonation of delay, which does not call for interference by this Court in exercise of powers under Section 115 of C.P.C.

4. I have considered the rival contentions. Reading of the impugned order shows that the learned Judge instead of considering the reasons for delay in filing the application for setting aside the ex-parte decree, has considered the reasons for setting aside the ex-parte decree. The learned Judge has failed to consider that once it is shown that the defendant came to know of the decree only on 31.7.92, the burden was on the plaintiff to show that the said statement was incorrect. In such a matter, the Court ought to have taken a liberal view. Considering all facts and circumstances of the case, I consider that there is sufficient reason for condonation of delay, which the learned Judge failed to consider in its right perspective.

5. In view of the aforesaid, this Revision Application is allowed and the impugned order passed by the learned Joint.Civil Judge (JD), Palanpur, Danta dated 8.11.1993 is set aside. The application for condonation of delay being Misc. Civil Application No.27/92 is accordingly granted on payment of cost of Rs.2,000/-. The learned Judge will now decide the application under Order 9 Rule 13 of C.P.C. filed by the petitioner-defendant. In case, the said application is allowed, the Trial Court will decide the suit expeditiously.

Rule made absolute to the aforesaid extent.

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msp.